IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

National Insurance Co. Ltd. Vs. Lakhji & others

S.B.CIVIL MISC. APPEAL NO.213/1993

Against the award dated 26.11.1992 made by the Motor Accidents Claims Tribunal, Banswara in Claim Case No.37/1988.

Date of Judgment : 15th December 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.R.K.Mehta for the appellant

BY THE COURT:

By way of this appeal, the insurer of the vehicle involved in accident seeks to question the award dated 26.11.1992 made by the Motor Accidents Claims Tribunal, Banswara in Claim Case No.37/1988 whereby the Tribunal has awarded compensation in the sum of Rs.50,000/- to the claimants for accidental death of their son Jinthra, about 20 years in age; and has held the appellant liable to the extent of Rs.44,800/-.

On behalf of the appellant-insurer, it has been contended that deceased was a person travelling in the

vehicle in question that was a tractor; and being insured for agriculture use, there was no liability in the appellant-insurer in relation to its use for non-agricultural purposes. Learned counsel Mr.Mehta appearing for the appellant has relied upon the decisions in National Insurance Co. Ltd. Vs. V. Chinnamma and others: 2004(3) TAC 577, National Insurance Co. Ltd. Vs. Om Prakash and others: 2006 ACJ 1334, Oriental Insurance Co. Ltd. Vs. Dhalu Devi and others: 1998 ACJ 210 and Oriental Insurance Co. Ltd. Vs. Deepchand: 2005 RAR 457 (DB).

Having heard learned counsel for the appellant and having perused the record, this Court is of opinion that this appeal by the insurer deserves to be dismissed for more than one reason.

In the first place it may be pointed out that in the claim case aforesaid, Purshottam, Premchand and Bhuralal were arrayed as owners of the vehicle involved in the accident. In the present appeal by the insurer that is essentially directed against the insured, respondent No.4 Pursottam, one of the owners of the vehicle, was reported to have expired. On 10.05.2000 two weeks' time was granted to the appellant to take necessary steps. On 13.12.2000 when nobody

appeared for the appellant and it was noticed that the application moved for substitution of legal representatives was not supported by affidavit and such affidavit was not filed despite granting of time, the application was rejected. It appears from the later order-sheet dated 16.10.2002 that another application moved for bringing legal representatives of the respondent No.4 was considered and was allowed and the legal representatives were ordered to be substituted. Learned counsel for the appellant submitted that after passing of the order dated 13.12.2000, an application for restoration was moved that was allowed and thereafter the order dated 16.10.2002 was passed. Particulars of such restoration application being not available on record, learned counsel prayed for and was granted time to supply the necessary particulars. However, on 14.11.2006 learned counsel for the appellant expressed his inability to supply any such particulars and requested that the matter may be considered finally on the state of record as available. Going by the record, this Court is of opinion that once the application for substitution was already rejected, another application for the same purpose could not have been entertained; and necessary consequence of rejection of application for substitution of legal representative of respondent No.4 remains that appeal abated qua the said deceased respondent; and he being one of the

co-owners, the appeal abated as a whole because no conflicting finding could be made in respect of other co-owners. The present appeal, therefore, deserves to be dismissed on this count alone.

Even if it be taken for the sake of arguments that in view of the order dated 16.10.2002 this appeal could be proceeded with, there is yet another impediment in accepting the submissions of the appellant in this case. It is noticed that the impugned award was made in relation to two claim applications relating to the same incident numbered 37/1988 and 36/1988. Of course, in other case No.36/1988 the award was made only in a sum of Rs.2,500/- and liability upon the insurer was fixed only at Rs.500/- but the capacity of the victim in claim case No.37/1988 was the same as that of the victim related with claim case No.37/1988. On being questioned about consequence of the findings against the appellant becoming final in relation to claim case No.36/1988, learned counsel submitted on 08.08.2006 that a few more appeals have been filed in relation the awards made in the claim applications relating to and arising out of the same accident. Office was directed to report about cognate matters and it has been reported that no matching details are found. Learned counsel for the appellant could also not state if any

other proceedings were adopted by the appellant in relation to the said claim case No.36/1988? If the finding on the liability of the appellant insurer becomes final in relation to said case, ordinarily such finding would operate against the appellant in the present case too and in this view of the matter, the contentions sought to be raised in this appeal must fail.

Even while leaving the aforementioned impediments aside and taking up for consideration the question sought to be raised in this appeal about the limits of liability of appellant-insurer, it is noticed that apart from the issue of relief, only two issues were framed by the Tribunal: one, if the victim died because of rash and negligent driving of tractor RJB 7684; and second, if the claimants were entitled for the amount of Rs.1,20,000/- and if so, from whom and how much? No issue relating to limited liability or non-coverage under the insurance policy was framed as such nor the appellant ever made submissions for framing of any such issue.

Yet further, in the trial of the claim case only the claimants have led evidence and the appellant has chosen not to lead any evidence at all. The submissions sought to be made in the present appeal turn out to be hollow and baseless when it is noticed that even primary evidence has not been

led by the appellant-insurer to establish the terms and conditions of the insurance policy. It has been repeatedly asserted in the memo of appeal that vehicle in question i.e. the tractor was registered only for agriculture use and was not registered as a goods vehicle and no coverage of the risk of labourers was undertaken. As noticed, even primary evidence has not been led and the insurance policy on record has not been exhibited in evidence. An adverse inference is definitely required to be drawn against the appellant and the contentions sought to be urged in this appeal must fail on this count too.

Even drawing of adverse inference is not the end of the matter and the fact remains that the case of the insurer in the present matter is fundamentally incorrect. A copy of insurance policy on record available at page C-15/4 though not exhibited in evidence shows that the policy was issued by the appellant-insurer for the vehicle in question for "Agr. & Commercial Use". It is obviously not a policy where the tractor in question is insured with reference to its agriculture use only as were considered in the cases sought to be relied upon. Upon noticing such clause in the insurance policy of providing coverage for agriculture and commercial use, learned counsel Mr.Mehta attempted to argue that even then coverage of a passenger carried in the said

tractor and trolley cannot be assumed and the liability of the insurer ought to be taken as that limited by the statute. This Court is of opinion that in view of vague and uncertain nature of defence adopted by the insurer and then in view of it having failed to lead any evidence, the submissions sought to be developed in this appeal cannot be countenanced and there appears no justification to disturb the award in question.

The appeal fails and is, therefore, dismissed. No order as to costs.

(DINESH MAHESHWARI),J.

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